IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 1928 OF 2006

Kamalakar Sadashiv Sawant.... Petitioner

versus

The Parsuram Education Society
and others. ..... Respondent.

Shri S.B. Shetye for the petitioner
Shri Neel G.Helekar for Respondents 1 and 2.
Shri S.K. Chinchalikar AGP for Respondents 3 and 4.

CORAM; A.P. DESHPANDE, J.
DATED; 15TH FEBRUARY, 2007

P.C.;

1. This order is in continuation of the order dated 17-1-2007 when I had taken up the matter, by consent of parties for final hearing. But no final order could be passed as the learned counsel for the petitioner wanted time with a view to produce on record a Government Resolution. The learned counsel submits that the petitioner was appointed as a junior clerk, in P.K.Sawant Secondary school, Chiplun. The appointment was made after following the procedure prescribed and the appointment was with effect from 1-12-2001 on probation for a period of two years. The Education Officer refused to approve the appointment by his order dated 16-1-2003. On account of refusal of the approval by the Education Officer, the

petitioner was served with a notice of termination. Aggrieved thereby the petitioner immediately filed an appeal before the Tribunal, and on account of passing of interlocutory order in the appeal, the petitioner continued to be in service during pendency of the appeal. The petitioner is in service even today as this court passed an interim order. It is thus clear that since the initial appointment in the year 2001 till date, without any interruption, the petitioner continues to be in service.

2. The only reason i.e. spelt out in the order dated 16-1-2003 passed by the Education Officer, refusing the approval is to the effect that the post of junior clerk is an isolated post and hence the vacancy therein has to be filled in my candidate from open category. It is then stated in the order that there is a ban of recruitment or filling in the post available for open category and as such approval to the appointment of the petitioner could not be granted.

3. It may not be out of place to state at this juncture that the petitioner belongs to scheduled caste category of the backward class and had been appointed to a post which is not reserved. There cannot be any objection to such an appointment. Even otherwise the ban has already been lifted and the

petitioner continues to be in service. It may be incidentally stated that decision of the State Government imposing ban on recruitment of teaching and non-teaching staff in the school was stayed, pursuant to interim orders passed at Nagpur Bench. Baring the technical objection about the operation of the ban when the petitioner was appointed, respondent have nothing against the present petitioner and his work and behaviour has been found satisfactory by the management. Infact the petitioner has been continued in service all through out. His appointment, has also approved by the Education Officer, subject to the final result of this petition.

4. Taking over all view of the matter, I am of the clear opinion that the ends of justice would be met by allowing the present writ petition. Hence I proceed to allow the same and pass the following order.

a) Impugned order of termination passed by the respondents no.1 and 2 dated 15-2-2003 is quashed and set aside. The order passed by the Presiding Officer, School Tribunal, Kolhapur dated 30-9-2005 is also quashed and set aside. It is declared that the continuation of petitioner in service is in accordance with the law.

b) Rule made absolute in the above terms with no order

as to costs.

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